

INTERLOCAL AGREEMENT

THIS CONTRACT is entered into by (Insert Name of County) County, herein referred to as "the County", and the (Insert Name of District) District, herein referred to as "the District".

WITNESSETH THAT:

WHEREAS, the County is the recipient of a Treasure State Endowment Program (TSEP) grant to (Describe the Project) owned and operated by the District; and

WHEREAS, this Contract between the County and the District will enable them to enhance cooperation in implementing the County's TSEP award to accomplish the above-described project; and

WHEREAS, the County, in its capacity as a TSEP grantee, has determined that the District can better supervise the design and construction phases of the (water and/or sewer) system; and

WHEREAS, the Montana Department of Commerce (MDOC) has required the County to enter into a contract with the District specifying the terms and conditions of the County's delegation of certain TSEP grant management responsibilities to the District; and

WHEREAS, both parties to this Contract understand that neither local government involved herein has in any way, expressly or implied, abrogated any of its individual powers, and that this Contract does not create any new organization or legal entity.

NOW, THEREFORE, THE COUNTY AND THE DISTRICT MUTUALLY AGREE AS FOLLOWS:

I. Responsibilities Delegated to the District

- A. The District will, subject to prior approval by the Board of County Commissioners, retain the services of a consulting engineering firm to design and supervise the construction of the project.
- B. The District will be responsible for all facets of the design and construction phases of the project, including the following:
 - 1. Design engineering;
 - 2. Construction engineering;
 - 3. Except as provided by paragraph IV. Administration below, compliance with all applicable state and federal requirements;

4. Except as provided by paragraph IV. Administration below, compliance with all other state and federal requirements as described in the MDOC TSEP Project Administration Manual;
 5. Preparation of construction bid documents; and
 6. Supervision of the bid process, the awarding of construction contracts, and construction of the project. The selection of the project contractor will be subject to the ratification of the County Board of Commissioners and bid solicitation documents will reflect this requirement.
- C. The District and its consulting engineer will receive, review, and approve all requests for payment for the items contained in paragraph B, above, and prepare and submit such requests to the County Board of Commissioners in a timely fashion in accordance with established procedures.
- D. During the term of this Contract, the District will maintain reasonable records of its performance hereunder in a manner consistent with generally accepted accounting principles. The District will allow the County and MDOC and their authorized representatives access to these records at any time during normal business hours. At the request of the County, the District will submit to the County, in the format prescribed by the County, status reports on its performance under this Contract.
- E. The District will provide documentation that the local share of the project that exceeds TSEP funds may be accessed by the County for the project no later than the time of construction bid award.

II. Payment of Design and Construction Costs Incurred by the District

In consideration of the District's acceptance of the responsibilities described in paragraph I, above, the County agrees to the following:

- A. Upon receipt of a valid claim for payment from the District for allowable project costs as specified in the County's contract with MDOC, a copy of which is appended as Attachment A of this Contract, and which by this reference is made a part hereof, the County will request the required amount of TSEP funds from MDOC and upon receipt of these funds, the County will honor the District's claim and pay the engineer or contractor accordingly.
- B. Each payment for engineering and construction costs will be drawn from TSEP and District funds (if applicable) in amounts that are proportionate to the percentage that such funds represent of the total cost of the project as specified in Attachment B of Attachment A.

- C. The County will deduct a retainage from each payment request equal to five (or ten) percent of the request, submitted by the District for construction costs incurred by the project contractor and hold this retainage until construction is completed, the engineer approves final payment, and the project is accepted, all in accordance with the conditions of the construction contract. (Note: A retainage requirement is optional.)
- D. The County will also withhold one percent of the amount of any claim submitted by the contractor and will forward this amount to the Montana Department of Revenue pursuant to section 15-50-206(2), MCA.
- E. The County may refuse to pay any claim which it deems not valid under the terms of the TSEP contract with MDOC (Attachment A). Any agreement between a TSEP recipient and a subrecipient, such as a water or sewer district, should include a "Scope of Work" which includes a description of the work to be performed, a schedule for completing the work, and a budget. These items are standard components of any TSEP grant agreement which is referred to here as an attachment.)

III. Duration of the Contract

- A. This Contract takes effect when the following conditions are satisfied:
 - 1. MDOC and the County Board of Commissioners have executed the TSEP contract;
 - 2. MDOC has issued a "Notice to Proceed";
 - 3. The County Attorney and the attorney for the District have approved this Contract as to form and content; and
 - 4. The County Board of Commissioners and the District's governing body have each reviewed this Contract and agreed fully to its terms and conditions.
- B. This Contract will terminate 90 days after the project engineer files a certificate of completion of the project with the Montana Department of Health and Environmental Sciences or MDOC closes out the TSEP project with the County, whichever occurs later.

IV. Administration

For purposes of implementing the joint undertaking established by this Contract, the County's Board of Commissioners and the District's Board of Directors hereby agree

to form a project coordinating committee consisting of the County's TSEP contract liaison, the project engineer, and a designated representative of the district to meet on a regular basis during the term of the TSEP project to provide for the efficient and effective implementation of this Contract and the activities contained herein. The life of the project coordinating committee will be concurrent with the term of this Contract.

V. Management of Real Property or Equipment Acquired

The primary purpose of this Contract is to allow the County to delegate responsibility for the design and construction of the District's project to the District and to define the procedures by which the County will disburse CDBG funds to pay the costs incurred as a result of these activities. The District's facilities will be constructed or improved as described in the TSEP contract with MDOC (Attachment A) and the District will continue to own and operate those facilities subject to the limitations contained in subparagraph B.

Upon the expiration of this Contract the District will transfer to the County any TSEP funds on hand at the time of expiration and any accounts receivable attributable to the use of TSEP funds.

VI. Indemnification

The District waives any and all claims and recourse against the County, including the right of contribution for loss or damage to persons or property arising from, growing out of or in any way connected with or incident to the District's performance of this Contract except claims arising from the concurrent or sole negligence of the County or its officers, agents, or employees. The District will indemnify, hold harmless, and defend the County against any and all claims, demands, damages, costs, expenses, or liability arising out of the District's performance of this Contract except for liability arising out of the concurrent or sole negligence of the County or its officers agents, or employees.

*VII. Suspension and Termination

The County may suspend or terminate this Contract if the District materially fails to comply with any term of the County's TSEP contract with MDOC. In addition, the County may terminate this Contract for convenience with reasonable notice.

This Contract has been approved by the County's Board of Commissioners and the District's Board of Directors.

(Name of County) Commissioners

Chairman

Date:

Commissioner

Date:

Commissioner

Date:

(Name of) District

Chairperson

Date:
